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REGULATION ON SINO-FOREIGN COOPERATION IN MAKING TELEVISION PROGRAMS

Translated by Litong Chen

I. INTRODUCTION

The Chinese Government traditionally has believed that the voices of adversaries, whether foreign or domestic, should not be heard. The Preamble to the Chinese Constitution states that, “The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.”¹

The beachhead which has been regarded as most critical for the Communist Party of China (“CPC”) to defend is China's mass media—the CPC's mouthpiece for its ideological rhetoric. Conventionally, the best way to keep a beachhead is to repel the enemy from its shores. Historically, China has successfully protected its culture, and specifically its media, from foreign “invasion.” For a long time, private and foreign investors, viewed as hostile forces and elements, were not allowed to invest or engage in the mass media business.

Because “the exploiting classes as such have been eliminated in [China]”² and class struggles between capitalism and socialism are no longer regarded as a primary social conflict, the CPC adopted the “Reform and Open Door” policy and introduced private economic reforms. The CPC's policies have become more pragmatic and economic in their focus. They are also less ideologically inspired, as they were during the Mao era. Under these reforms and policy changes, parts of the mass media, such as films and television programs, were opened to both foreign and private investment. The newspapers, radio and television station sectors remained closed to such investment.

In 1995, the Chinese government allowed foreign investment in the television program industry under the Administrative Regulation of Sino-foreign Cooperatives Producing Television Programs (Videos)

¹ ZHONGHUA RENMIN GONGHEGUO XIANFA [PRC CONSTITUTION], pmbl. (2004).

² *Id.*

promulgated on September 1, 1995 ("Old Regulation").³ The Regulation on Sino-foreign Cooperation in Making Television Programs ("New Regulation") was promulgated on September 21, 2004, to replace the Old Regulation. The New Regulation is significantly less restrictive than the old one. For example, Article 13 of the Old Regulation outlawed any programs "not in accordance with" (*Wei bei*, 违背) the Constitution and laws of the People's Republic of China as well as other restricted programs as listed therein. In contrast, in addition to the listed restricted programs, the New Regulation states that the television programs must not be "against" (*Fan dui*, 反对) the cardinal principles of the Constitution and must not have contents which are "prohibited" (*Jin zhi*, 禁止) by law, administrative regulation, or the State's acts.

The New Regulation manifests a governing philosophy which is new in China to both the government and the governed—"you may do what is not prohibited" rather than "you may only do what is permitted."

Despite the fact that the New Regulation opens Chinese mass media to foreign investment, the Chinese government and the CPC preserve their ideological rhetoric under the "cardinal principles" of the Constitution, which are to maintain leadership of the CPC, to carry on Marxism-Leninism and Mao Zedong Thought, to adhere to people's democratic dictatorship, and to follow the socialist road.⁴ Television programs that oppose or undermine these cardinal principles will have no opportunity to ride the airways in China.

³ See Zhongwai Hezuo Zhizuo Dianshiju Guanli Guiding [Administrative Regulation of Sino-foreign Cooperatives Producing Television Programs (Videos)] (promulgated and effective Sept. 1, 1995, repealed Oct. 21, 2004), available at http://www.chinacourt.org/flow/show1.php?file_id=23429&str1=%D6%D0%CD%E2%BA%CF%D7%F7%D6%C6%D7%F7%B5%E7%CA%D3%BE%E7 (last visited April 4, 2005).

⁴ XIANFA, pmbl.

国家广播电影电视总局令
第 41 号

《中外合作制作电视剧管理规定》经 2004 年 6 月 15 日局务会议通过，现予发布，自 2004 年 10 月 21 日起施行。

局长：徐光春
二〇〇四年九月二十一日

中外合作制作电视剧管理规定

第一条

为促进中外文化交流，繁荣电视剧创作，加强中外合作制作电视剧管理，保护制作者的合法权益，制定本规定。

第二条

本规定适用于境内广播电视节目制作机构（以下称中方）与外国法人及自然人（以下称外方）合作制作电视剧（含电视动画片）的活动。

第三条

国家广播电影电视总局（以下称广电总局）负责全国中外合作制作电视剧（含电视动画片）的管理工作，对境外合作方、数量和中外联合制作电视剧（含电视动画片）题材实施调控。

省级广播电视行政部门负责本行政区域内中外合作制作电视剧（含电视动画片）的具体管理工作。

II. TRANSLATION OF “REGULATION OF SINO-FOREIGN COOPERATION IN MAKING TELEVISION PROGRAMS”

By the 41st Order of the State Broadcasting, Movie, and Television General Bureau, the Regulation on Sino-foreign Cooperation in Making Television Programs was passed by the Bureau Conference on June 15, 2004, now promulgating, and shall take effect on October 21, 2004.

Director: XU, Guangchun
September 21, 2004

Article 1

This Regulation is made for the purpose of promoting Sino-foreign cultural exchange, cultivating the creation of television programs, strengthening the management of Sino-foreign cooperative television program productions, and protecting the legal rights and interests of producers.

Article 2

This Regulation applies to activities engaged in by domestic Chinese entities producing and broadcasting television programs (hereinafter “Chinese Party or Parties”) and foreign legal persons and individuals (hereinafter “Foreign Party or Parties”) with respect to cooperative production of television programs (including television animation).

Article 3

The State Broadcasting, Movie and Television General Bureau (hereinafter “General Bureau”) is responsible for managing Sino-foreign cooperative television program productions (including television animation) on a national basis and has the governing authority to decide and control identity of foreign cooperating parties, volume and subject matter of Sino-foreign cooperative television program productions (including television animation). Administrative departments in charge of broadcast television at the provincial level shall be responsible for the actual administration relating to Sino-foreign cooperative television program productions within their respective administrative regions.

第四条

国家对中外合作制作电视剧（含电视动画片）实行许可制度。

未经批准，不得从事中外合作制作电视剧（含电视动画片）活动；未经审查通过的中外合作制作电视剧（含电视动画片）完成片，不得发行和播出。

第五条

中外合作制作电视剧可以采取下列形式：

（一）联合制作，系指中方与外方共同投资、共派主创人员、共同分享利益及共同承担风险的电视剧（含电视动画片）制作方式；

（二）协作制作，系指由外方出资并提供主创人员，在境内拍摄全部或部分外景，中方提供劳务或设备、器材、场地予以协助的电视剧制作方式；

（三）委托制作，系指外方出资，委托中方在境内制作的电视剧制作方式。

第六条

申请中外联合制作电视剧立项，应符合下列条件：

（一）中方机构须持有《电视剧制作许可证（甲种）》；

（二）中方机构应对联合制作的电视剧向广电总局同时申报合拍电视剧题材规划；

（三）双方共同投资，包括以货币直接投资，或以劳务、实物、广告时间等折价作为投资；

（四）前期创意、剧本写作等主要创作要素由双方共同确定；

Article 4

The State operates a licensing system regulating Sino-foreign cooperative television program productions (including television animation).

No one shall engage in activities of Sino-foreign cooperative television program productions (including television animation) without approval. There shall be no circulation and broadcasting of finalized television programs cooperatively produced by Chinese and Foreign Parties (including television animation) absent state examination and endorsement.

Article 5

Sino-foreign cooperative television program productions may take one of the following forms:

1. Joint production, referring to such program (including television animation) production methods whereby Chinese and Foreign Parties jointly invest, appoint principal production personnel, share profits and assume risks;
2. Coordinative production, referring to such program (including television animation) production methods whereby Foreign Parties invest, appoint principal production staff and film all or part of the outdoor scenes domestically, while Chinese Parties supply services or equipment, machinery, or sites in making programs; or
3. Entrusted production, by which Foreign Parties invest in and entrust responsibility to Chinese Parties in making television programs domestically.

Article 6

The following criteria shall be satisfied as pre-conditions to an application for joint Sino-foreign cooperative television program productions:

1. Possession of a License for Producing Television Programs (Type A) by Chinese Parties;
2. A simultaneous submission of a report to the General Bureau by Chinese Parties with respect to the subject and planning of the jointly-produced television program;
3. A shared investment by both Chinese and Foreign Parties including direct monetary investment, or investment in the form of services, goods, advertising time or other non-monetary means;
4. A mutual decision made by both parties regarding principal creative elements such as original ideas, and scripts;

(五) 共派创作人员、技术人员参与全程摄制。电视剧主创人员(编剧、制片人、导演、主要演员)中,中方人员不得少于三分之一;

(六) 电视剧的国内外版权归中方及外方共同所有。

第七条

申请中外联合制作电视剧立项,应提交下列书面材料:

(一) 申请书;

(二) 《电视剧制作许可证(甲种)》复印件;

(三) 省级广播电视行政部门的初审意见(直接从广电总局申领《电视剧制作许可证(甲种)》的中方制作机构除外);

(四) 每集不少于 5000 字的分集梗概或完整的剧本;

(五) 境内外主创人员(编剧、制片人、导演、主要演员)名单及履历;

(六) 制作计划、境内拍摄景点及详细拍摄日程;

(七) 合作协议意向书;

(八) 外方法人注册登记证明(外方为自然人的,应提交履历)、资信证明。审批机关可以要求外方提交经过公证的境外第三者担保书。

第八条

申请中外联合制作电视动画片立项,应符合下列条件:

(一) 中方机构须持有《广播电视节目制作经营许可证》;

(二) 中方机构应对联合制作的电视动画片向广电总局同时申报合拍电视动画片题材规划;

5. A joint appointment by both parties of production and technological personnel to participate in the entire filming and producing process. Personnel appointed by Chinese Parties shall not be less than one third of the principal production personnel (i.e., writers, producers, directors, and leading actors and actresses); and
6. Co-ownership of both domestic and foreign copyrights of the television programs by Chinese and Foreign Parties.

Article 7

An application for joint Sino-foreign cooperative television program productions shall include the following documents:

1. The application form;
2. A photocopy of a License for Producing Television Programs (Type A);
3. The preliminary opinion of an administrative broadcasting and television department at the provincial level (except for Chinese Parties who directly applied and have obtained their License for Producing Television Programs (Type A) from the General Bureau);
4. A synopsis of not less than five thousand words of each episode in a series or of a complete screenplay;
5. A list of names and resumé of both Chinese and foreign principal production personnel (including writers, producers, directors, and leading actors or actresses);
6. A production plan, local filming sites, and a detailed filming schedule;
7. A letter of intent for the cooperative agreement; and
8. Proof of business registration record of each Foreign Party (or resumé of each Foreign Party in the case of a natural person), and proof of financial creditability. The examination and approval agency may further require Foreign Parties to submit notarized letters of guarantee issued by overseas third parties.

Article 8

The following criteria shall be satisfied as pre-conditions to an application of joint Sino-foreign cooperative television animation productions:

1. Possession of Business Licenses for Producing and Operating Broadcast Television Programs by Chinese Parties;
2. A simultaneous submission of a report to the General Bureau by Chinese Parties with respect to the subject and planning of the jointly-produced television animations;

(三) 双方共同投资, 包括以货币直接投资, 或以劳务、实物、广告时间等折价作为投资;

(四) 前期创意、剧本写作等主要创作要素由双方共同确定;

(五) 电视动画片的国内外版权归中方及外方共同所有。

第九条

申请中外联合制作电视动画片立项, 应提交以下材料:

(一) 申请书;

(二) 《广播电视节目制作经营许可证》复印件;

(三) 省级广播电视行政部门的初审意见(直接从广电总局申领《电视剧制作许可证(甲种)》的中方制作机构除外);

(四) 每集不少于 500 字的分集梗概或完整的剧本;

(五) 合作协议意向书;

(六) 外方法人注册登记证明(外方为自然人的, 应提交履历)、资信证明。审批机关可以要求外方提交经过公证的境外第三者担保书。

第十条

申请中外协作制作、委托制作电视剧(含电视动画片), 应提交下列文件:

(一) 申请书;

(二) 每集不少于 1500 字的分集梗概或完整的剧本;

(三) 主创人员(编剧、制片人、导演、主要演员)名单;

(四) 境内拍摄景点及拍摄计划;

(五) 合作协议意向书;

(六) 审批机关可以要求外方提供的相关资信证明。

3. A shared investment by both Chinese and Foreign Parties including direct monetary investment, or investment in the form of services, goods, advertisement time or other means;
4. A mutual decision made by both parties regarding principal creation elements such as original ideas and scripts; and
5. Co-ownership of both domestic and foreign copyrights of the television animation by Chinese and Foreign Parties.

Article 9

An application for joint Sino-foreign cooperative television animation productions shall include the following documents:

1. The application form;
2. A photocopy of a Business License for Producing and Operating Broadcast Television Program;
3. The preliminary opinion of an administrative broadcasting and television department at the provincial level (except for the Chinese Parties who directly applied and have obtained their License for Producing Television Programs (Type A) from the General Bureau);
4. A synopsis of not less than five hundred words of each episode in a series or of a complete screenplay;
5. A letter of intent for cooperative agreement; and
6. Proof of business registration record of each Foreign Party (or resumé of each Foreign Party in the case of a natural person), and proof of financial creditability. The examination and approval agency may further require Foreign Parties to submit notarized letters of guarantee issued by overseas third parties.

Article 10

An application for coordinative or entrusted television program productions (including television animation) shall include the following documents:

1. The application form;
2. A synopsis of not less than one thousand and five hundred words of each episode in a series or a complete screenplay;
3. A list of names of principle production personnel (including writers, producers, directors, and leading actors or actresses);
4. Local filming sites and a detailed filming schedule;
5. A letter of intent for cooperative agreement; and
6. Relevant proof of financial creditability when requested by the examination and approval authority.

第十一条

直接从广电总局申领《电视剧制作许可证（甲种）》的中方制作机构申请与外方合作制作电视剧（含电视动画片），向广电总局申报。

其他中方制作机构申请与外方合作制作电视剧（含电视动画片），经所在地省级广播电视行政部门同意，报广电总局审批。

第十二条

广电总局在正式受理中外合作制作电视剧（含电视动画片）申请后，应当在法定期限内作出是否准予拍摄的决定。其中中外联合制作电视（含电视动画片）的审查时间为五十日（含专家评审时间三十日）；中外协作制作、委托制作的电视剧（含电视动画片）的审查时间为二十日。符合条件的，由广电总局作出准予拍摄的批复；不符合条件的，应当书面通知申请人并说明理由。

送审单位对不准予拍摄的决定不服的，可以在收到决定之日起六十日内，向广电总局提出复审申请。广电总局应当在五十日内作出复审决定，其中组织专家评审的时间为三十日，并将决定书面通知送审机构。

第十三条

中外联合制作电视剧（含电视动画片）完成后，应当按照本规定第十一条规定的程序报省级以上广播电视行政部门审查。

第十四条

申报中外联合制作电视剧（含电视动画片）完成片审查，应提交以下材料：

Article 11

Chinese Parties directly obtaining their License for Producing Television Programs (Type A) from the General Bureau shall apply to the General Bureau for approval of cooperative production of television programs (including animation) with Foreign Parties.

Other Chinese Parties, following an application to provincial administrative departments in charge of television and broadcasting for an approval of cooperative production of television programs (including animation) with Foreign Parties and upon receipt of such approval, shall then apply to the General Bureau for examination and approval.

Article 12

The General Bureau, after formally accepting an application for Sino-foreign cooperative television program productions (including television animation), shall determine within the prescribed time limit whether to grant filming permission. The examining and reviewing period for joint Sino-foreign cooperative television program productions (including television animation) is fifty days (including a thirty day period for expert review). The examining and reviewing period for coordinative and entrusted Sino-foreign cooperative television program production (including television animation) is twenty days. Applications meeting the requirements shall be approved by the General Bureau. Applicants whose applications fall short of the requirements shall receive written notification explaining reasons for denial. Applicants not satisfied and in disagreement with the decision to deny a filming application may apply for reexamination with the General Bureau within sixty days of receiving the notification. The General Bureau shall make a reexamination decision within fifty days, which includes thirty days for organizing expert review, and the applicant shall be notified of the decision in writing.

Article 13

Joint Sino-foreign cooperative television program productions (including television animation) shall, upon completion of filming, be submitted for review by the administrative departments in charge of broadcast television at or above the provincial level pursuant to the procedures set out in Article 11.

Article 14

Submission of completed joint Sino-foreign cooperative television programs for review shall include the following documents:

(一) 省级广播电视行政部门的初审意见(直接从广电总局申领《电视剧制作许可证(甲种)》的中方制作机构除外);

(二) 广电总局准予拍摄的批复和合拍电视剧(电视动画片)题材规划的复印件;

(三) 图像、声音、时码等符合审查要求的大 1 / 2 完整录像带一套;

(四) 每集不少于 300 字的剧情梗概;

(五) 与样带字幕相同的片头片尾字幕。

第十五条

广电总局在正式受理中外联合制作的电视剧(含电视动画片)完成片审查申请后,应当在五十日内作出是否准予行政许可的决定,其中组织专家评审的时间为三十日。符合条件的,由广电总局颁发《电视剧(电视动画片)发行许可证》;不符合条件的,应当书面通知申请人并说明理由。

送审单位对不准予行政许可的决定不服的,可以在收到决定之日起六十日内,向广电总局提出复审申请。广电总局应当依前款规定的审查期限作出复审决定,并将行政许可决定书面通知送审机构。复审合格的,由广电总局核发《电视剧(电视动画片)发行许可证》。

第十六条

已经取得广电总局准予拍摄批复的剧本和已经取得《电视剧(电视动画片)发行许可证》的完成片,不得随意进行实质性的改动。确需对剧名、主要人物、主要情节和剧集长度等进行改动的,应当按照本规定重新报批。

1. Preliminary opinion issued by the administrative department in charge of broadcast television at the provincial level (except for Chinese Parties who directly applied and have obtained their License for Producing Television Programs (Type A) from the General Bureau);
2. Photocopy of the filming permission granted by the General Bureau and proposal planning subject of the cooperative production (including television animation) respectively;
3. A set of videotapes that show conformity of visual, audio and timing requirements and include more than one half of the completed version of the television program;
4. A synopsis of not less than three hundred words of each episode; and
5. The beginning and end credits as recorded on the sample videotape.

Article 15

The General Bureau, after formally accepting an application for examining completed Sino-foreign cooperative television programs (including television animation), shall decide within fifty days, with thirty days for organizing expert review, whether to issue administrative approval for the circulation of the program. The General Bureau shall issue a License for Circulating Television Programs (Television Animation) to qualified applications. Applicants whose applications fall short of the requirements shall receive written notification explaining reasons for denial.

Applicants not satisfied and in disagreement with the decision to deny administrative approval may apply for reexamination with the General Bureau within sixty days of receiving the notification. The General Bureau shall make a reexamination decision within the prescribed time limit as provided by Article 12, and notify applicants in writing of the administrative decision. Applications meeting the reexamination requirements shall receive from the General Bureau the License for Circulating Television Programs (Television Animation).

Article 16

Scripts that have received permission to film from the General Bureau and finalized programs that have obtained License for Circulating Television Programs (Television Animation) shall not be altered substantively thereafter. Where titles, main characters, major story plot or the length of the drama require necessary changes, the application shall be re-submitted pursuant to rules set by this Regulation.

第十七条

国家鼓励中外合作制作体现中华民族优良传统和人类文明进步内容的电视剧，鼓励中外合作制作旨在塑造中国动画品牌形象的电视动画片。

中外合作制作的电视剧（含电视动画片）中不得含有下列内容：

- （一）反对宪法确定的基本原则的；
- （二）危害国家统一、主权和领土完整的；
- （三）泄露国家秘密、危害国家安全或者损害国家荣誉和利益的；
- （四）煽动民族仇恨、民族歧视，破坏民族团结，或者侵害民族风俗、习惯的；
- （五）宣扬邪教、迷信的；
- （六）扰乱社会秩序，破坏社会稳定的；
- （七）宣扬淫秽、赌博、暴力或者教唆犯罪的；
- （八）侮辱或者诽谤他人，侵害他人合法权益的；
- （九）危害社会公德或者民族优秀传统文化的；
- （十）有法律、行政法规和国家规定禁止的其他内容的。

第十八条

凡以中国特色为表现主题的中外联合制作的电视动画片，可视同国产电视动画片播出。

第十九条

中外联合制作电视剧（含电视动画片）应制作普通话语言版本。根据发行需要，经合作方同意，可以制作相应国家、地区、少数民族的语言文字版本。

第二十条

违反本规定的，依据《广播电视管理条例》的规定予以处罚。构成犯罪的，依法追究刑事责任。

Article 17

The State encourages Sino-foreign cooperative television program productions that reflect the outstanding cultural heritage of the Chinese people and of human civilization progress, and encourages Sino-foreign cooperative television animations made for the purpose of establishing production reputation for Chinese animation.

Sino-foreign cooperative television program productions (including television animation) shall not include the following contents that:

1. Violate the cardinal principles specified by the Constitution;
2. Endanger State unity, sovereignty and territorial integrity;
3. Disclose State secrets, threaten State security or infringe upon the State's honor, interests, and rights;
4. Provoke racial hatred, racial discrimination, hinder national unity or damage national customs and habits;
5. Advocate religious cults and superstitions;
6. Disturb social order or impair social stability;
7. Advocate pornography, gambling, violence or solicit criminal behavior;
8. Insult or defame others or infringe upon another person's interests or rights;
9. Imperil social morals or virtuous ethnic cultural tradition; or
10. Contain other contents proscribed by law, administrative regulations or rules.

Article 18

Sino-foreign cooperative television animation that adopts unique Chinese features as its major theme may be recognized as domestic television animation.

Article 19

Sino-foreign cooperative television program productions (including television animation) shall include Mandarin Language versions. Pursuant to circulation necessity and upon agreement by both parties, a different language version of the production may be made to correspond to the concerned countries, districts, and minorities.

Article 20

Any violation of this Regulation shall be penalized according to the Administrative Regulation on Broadcast Television. Where a violation constitutes criminal behavior, criminal liability will be imposed accordingly.

第二十一条

与香港特别行政区、澳门特别行政区、台湾地区的法人与自然人合作制作电视剧（含电视动画片），参照本规定执行。

第二十二条

本规定自 2004 年 10 月 21 日起施行，广播电影电视部《中外合作制作电视剧（录像片）管理规定》（广播电影电视部令第 15 号）同时废止。

Article 21

Cooperative television program productions (including television animation) made with legal and natural persons from Hong Kong Special Administrative Region, Macao Special Administrative Region, or Taiwan are subject to this Regulation.

Article 22

The Regulation shall be implemented as of October 21, 2004. The Administrative Regulation of Sino-foreign Cooperatives Producing Television Programs (Videos) (Order 15 of the Ministry of Broadcasting, Movie and Television) of the Ministry of Broadcasting, Movie and Television shall be superseded simultaneously.

